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NTSB Order No. EA-3813

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 23rd day of February, 1993

_____)	
JOSEPH M. DEL BALZO,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-11048
v.)	
)	
RICHARD DEAN HORDON,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The Administrator has appealed from the oral initial decision of Administrative Law Judge Joyce Capps, rendered at the conclusion of an evidentiary hearing on September 4, 1990.¹ Upon respondent's motion, the law judge dismissed two of the three allegations in the Administrator's complaint.² The remaining

¹An excerpt from the hearing transcript containing the initial decision is attached.

²The two charges dismissed by the law judge were for

charge alleged that respondent violated section 47.69(d) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 47).³ The decision of the law judge reflects her conclusion that the Administrator did not prove the violation by a preponderance of the evidence. We agree and, thus, deny the appeal.

An in-depth exposition of the facts is unnecessary, as the law judge described the case in sufficient detail. Briefly, the Administrator claims that on September 1, 1989, respondent utilized an aircraft registered under a dealer's certificate for a purpose that was not "necessary for, or incident to, sale of the aircraft." Respondent claims that he flew the aircraft, which had a "for sale" sign and pertinent information posted on it, roundtrip from Newburyport, Massachusetts to Laconia, New Hampshire to join several pilots, their spouses, and other business people for dinner. He viewed this event as an ideal opportunity to showcase the aircraft for eventual sale, since

(..continued)

violations of sections 91.105(a) and 91.9 (now 91.155(a) and 91.13) of the Federal Aviation Regulations (FAR), 14 C.F.R. Part 91. The Administrator did not appeal this action.

³Section 47.69 reads, in pertinent part:

"Limitations.

A Dealer's Aircraft Registration Certificate is valid only in connection with use of aircraft -

* * * *

(d) On a flight that is -

(1) For required flight testing of aircraft; or

(2) Necessary for, or incident to, sale of the aircraft.

However, a prospective buyer may operate an aircraft for demonstration purposes only while he is under the direct supervision of the holder of the Dealer's Aircraft Registration Certificate or his agent."

many of the pilots were also potential customers.⁴ In addition, respondent considered at least two of the five passengers on board the Cessna 340 as possible customers even though they were not in the market for a twin-engine aircraft at that time.⁵ Ultimately, these passengers bought a different aircraft from respondent.⁶

In his appeal, the Administrator contends that the evidence does not support the law judge's decision that respondent's use of the Cessna 340 was incident to the sale of that aircraft. After consideration of the briefs of the parties and the record below, the Board concludes that the law judge's decision should be affirmed.

Respondent testified that his attempts to sell the aircraft through advertising had been unsuccessful. By flying an aircraft that was for sale and so marked to an event attended by several pilots and aviation enthusiasts, respondent exposed the aircraft to a large array of potential buyers. Although the record is silent on whether the aircraft was sold as a result of this exposure, that information would have no bearing on the

⁴Respondent testified that he believed there were potential customers who had the financial capital to purchase that Cessna 340 among the approximately 30 people attending this event; some did, in fact, look at the aircraft that evening. Transcript (Tr.) at 122, 127.

⁵Respondent maintains that it is usual for a dealer, at times, to show a customer a more deluxe model than the customer is looking for in order to eventually "move him into a twin engine complex airplane." Tr. at 121.

⁶The passengers were two married couples and respondent's wife. Of the two couples, three persons had airman certificates.

disposition of this case.⁷ The law judge could reasonably conclude on the evidence before her that the challenged operation was part of a genuine attempt to expose the aircraft for possible sale not just to the passengers on the flight, but also to those who would view it in Laconia. We do not read the regulation to impose liability where good faith efforts to market an aircraft happen to be unsuccessful.

We find that based on the evidence adduced at the hearing, the law judge had a reasonable basis on which to conclude that respondent's use of this aircraft was incident to the sale of that aircraft.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is denied; and
2. The initial decision is affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁷It is useful to note that section 47.69(d) was last amended "to broadly permit use of dealers' aircraft registration certificates on all flights necessary for and incident to sale of that aircraft...." 30 Fed. Reg. 1283 (1965).